v. West, supra. It is conceded that the police power is adequate to restrain offensive noises and odors, and it is argued, *Freund Police Power*, § 182, that a statute affording similar protection to the eye would not be unconstitutional; that it would only be an amplification of a recognized principle, and not the creation of a new one.

CRIMINAL LAW—TRIAL—EFFECT OF WAIVER OF ARGUMENT BY ACCUSED.—CUNNINGHAM v. PEOPLE, 71 N. E. 389 (Ill.)—When after the opening argument in a prosecution for rape the defendant waived the right to address the jury, *held*, that the people had no further right to address the jury.

The discretion of the court as to the opening and closing argument in criminal cases is allowed a wide range, even in the Code states. This discretion once exercised is seldom disturbed. *Vines v. State*, 19 S. W. 545. An almost unbroken line of authority permits each of two states' attorneys to address the jury, regardless of whether the defense presents argument or not. *State v. Stewart*, 9 Nev. 120. In the principal case this was not done in the trial court, but the first states' attorney was allowed to address the jury after he had closed his argument. As is shown in *Barden v. Briscoe*, 36 Mich. 255, the effect is apt to be to cut the plaintiff off from half his argument, a result to which the defendant has no absolute right.

DISCHARGE OF SERVANT—MALICIOUS PROCUREMENT.—LANCASTER v. HAMBURGER, 71 N. E. 289 (OHIO).—*Held*, that where a patron of a railroad company secures the discharge of a conductor because of rudeness, he incurs no liabilities to the conductor, even though actuated by malice.

This case bears an analogy to the "strike order" cases, but even the opinions in the latter favorable to recovery against the person ordering the strike are not based on the element of malice; *Allen v. Flood* (1898) App. Cases, 1—81. *Quinn v. Leatham* (1901) App. Cases, 495; it being absolutely settled that while malice has some importance in the commission of an illegal act, it is of no importance where a person keeps within his legal rights, *Paine v. Chandler*, 134 N. Y. 385. However, there are cases in which this is not so, especially in the exercise of property rights; see *Chesley v. King*, 74 Me. 164. 'A wanton infliction of damage can never be a right.' *Burke v. Smith*, 69 Mich. 380. But as the opinion in the principal case forcibly suggests, if absence of malice were necessary to safely report the misconduct of a servant, his chance of immunity would grow proportionately to the enormity of his offense.

HUSBAND AND WIFE—HUSBAND'S LIABILITY FOR WIFE'S TORTS.—GOKEN v. DALLUGGE, 99 N. W. 818 (Neb.). *Held*, that the common-law rule that a husband is liable jointly with his wife for torts committed by her in his presence, does not exist in Nebraska.

The common-law rule holding the husband liable for the wife's tort's, 11 Kent's Com. 149, has been abrogated by statute in several of the states but the decision in the principal case, following *Martin v. Robson*, 65 Ill. 129, proceeds upon the theory that in giving the wife the right to manage her separate property, the law has so modified the disabilities of the wife and the rights of the husband as to remove the reason for holding the latter liable for the torts of the former.

In repudiating this doctrine it was said in *Quick v. Miller*, 103 Pa. 67. "A statute will not be deemed to exempt a husband from the common-law liability for his wife's torts unless it expressly so declares." Married Women's Property Acts have been passed in most of the states and has been held